

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

CARLASS V. ROKER, and
CARLASS V. ROKER
REAL ESTATE COMPANY,

Respondent.

HUDALJ 91-1581-DB
Issued: March 27, 1991

Timothy J. Potts, Esquire
For the Respondents

Bruce Albright, Esquire
For the Government

Before: ROBERT A. ANDRETTA
Administrative Law Judge

Initial Determination

Jurisdiction and Procedure

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") dated September 26, 1990 to debar Carlass V. Roker ("Respondent") and Carlass V. Roker Real Estate Company from further participation in primary covered transactions and lower tier covered

transactions as either participants or principals at HUD and throughout the Executive Branch of the Federal Government and from participation in procurement contracts with HUD for a period of three years from August 21, 1989, on which date Respondent had been suspended. The Department's action is based upon Respondent Roker's conviction in the United States District Court for the Northern District of Ohio for violation of Title 18, Sections 1010 and 2.

Respondent Roker and her affiliate, Carlass V. Roker Real Estate Co., were suspended from Federal Government programs by General Deputy Assistant Secretary James E. Schoenberger on August 21, 1989. Respondents contested that suspension and on December 28, 1990, Jean S. Cooper, Administrative Judge, Board Of Contract Appeals, upheld the suspension pending resolution of any legal debarment or Program Fraud Civil Remedies Act proceedings. This proposed debarment is based upon the same facts as was the suspension.

Respondents' attorney requested a hearing on the proposed debarment by letter dated October 24, 1990. On November 26, 1990, I issued a Notice and Order of this proceeding and on December 17, 1990 the Department filed the Government's Brief. Respondents filed their Response to the Government's Brief on January 15, 1991. Because the proposed action is based on a conviction, the hearing in this case is limited under 24 C.F.R. Section 24.313(b)(2)(ii) to the submission of documentary evidence and written briefs. This matter being ripe for decision, I make the following findings and conclusions based upon written submissions.

Finding of Fact

As a realtor, Respondent Roker participated in a covered transaction by assisting a purchaser of a property to obtain FHA-insured mortgage financing. On September 14, 1989, Respondent entered a plea of guilty to making a false statement in an application for HUD/FHA mortgage loan insurance in violation of Title 18, Section 1010 and 2 of the United States Criminal Code. Respondent received a suspended sentence and was placed on probation for a period of two years by the United States District Court for the Northern District of Ohio.

The proposed debarment is based upon Respondent's conviction for falsifying information in connection with an application for HUD/FHA mortgage insurance on the purchase of real property located at 6911 Hecker Avenue in Cleveland, Ohio. The property was purportedly being purchased by one June Treco, who is a fictitious person. Three false statements or misrepresentations are attributed to Respondent in connection with the processing of the loan. Respondent stated that the purchaser, June Treco, had made a cash down payment; that Respondent possessed the down payment; and that a \$2,700 real estate commission was to be paid to Respondent in the course of this transaction. The most critical evidence presented by the United States Attorney was the false representation relative to the real estate commission supposedly paid to Respondent. Most of the \$2,700 commission was kicked back by Respondent to a mortgage solicitor/loan originator, Robert Brinton, working for American Midwest

Mortgage Company (AMMC).

In exchange for a guilty plea and her promise to cooperate in the government's investigation and prosecution of FHA mortgage fraud in the Northern District of Ohio, no further charges were brought against the Respondent.

Applicable Law

The Respondent is a "principal" and a "participant" as defined by the Department's regulations that are codified at 24 CFR Sections 24.105(m) and (p) respectively. Participation in HUD's mortgage insurance programs amounts to participation in a "covered transaction," which includes "loan guarantees" and "insurance." (24 CFR Section 24.110(a))

The Department relies upon the causes for debarment stated in 24 CFR Section 24.305. Specifically Section 24.305 provides that debarment may be imposed in accordance with:

(a) Conviction of or civil judgement for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement transaction;

* * * * *

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

Respondent Roker's conviction for falsification of an HUD/FHA mortgage loan insurance application is cause for her debarment under these regulations.

Discussion

Respondent admits having committed the violations. She argues that her misdeeds were born of circumstances unlikely to occur again. Respondent asserts that this "scheme" was not the product of her thinking, but that pressed by a host of independent economic and emotional hardships, she did some things of which she is profoundly regretful and embarrassed. Respondent also argues that she gained very little financially from her misconduct and suffered a great deal. Included in her brief is a letter from James V. Moroney, Assistant United States Attorney, who states in part:

Ms. Roker's cooperation was critical in identifying Brinton's modus operandi in fraudulent kickback situations and her assistance led to the identification of previously undiscovered loan frauds perpetrated by Brinton. Shortly after Ms. Roker agreed to cooperate with the government, Brinton was indicted on eight counts on March 9, 1989. It is my further belief that information provided by Ms. Roker was instrumental in negotiating a guilty plea by Brinton It is

also my belief that Ms. Roker's cooperation led to the United States' success in obtaining a very favorable indemnity agreement from American Midwest Mortgage Company regarding loans originated by Robert Brinton, his son Edward Brinton and another solicitor working for AMMC.

Respondent contends that she presently poses no threat of being professionally irresponsible; that she has paid for what she did over five years ago, and requests that if debarment is warranted, the debarment period be reduced to a period of eighteen months or twenty-four months starting with the date of her suspension.

It is the Department's position that the Respondent's conviction evidences a serious violation of the law and HUD requirements, and shows a lack of present responsibility and business integrity. HUD's regulations provide that the cause for debarment must be established by a preponderance of the evidence. When a debarment is based upon a conviction, the standard is deemed to have been met. The Department argues that the standard for debarment has been met in this case and there is cause for debarment. The Department further argues that the crime of filing false documents with HUD involves a knowing and willful act against the United States; that Respondent's criminal conduct of making false statements to the Government shows a serious lack of business integrity and honesty which directly affects her present responsibility as a participant in HUD programs. The Department contends that Respondent's intentional and flagrant violation of the law evidences a serious business risk to the Department which warrants the imposition of a three-year debarment. I agree.

Respondent Roker has been suspended from participating in Departmental programs since August 21, 1989. There is no evidence presented by the Department that Respondent has participated in any illegal activities since her conviction in 1989 or that she had problems with HUD prior to the event that lead to her conviction. The record shows that Respondent cooperated with investigating officials and has provided information to the U. S. Attorney's office regarding potential items of investigative interest in the mortgage industry in the Northern District of Ohio. While Respondent's personal financial problems do not excuse her from criminal actions, Respondent does express remorse for her actions. However, Respondent Roker has committed a serious offense, and the Federal government requires sanctions against serious offenses. Therefore, as stated above, I agree that Respondent should be debarred for three years.

However, while I take note of these considerations and conclude as stated, I also note that it is important to the government to be able to show future Respondents that their cooperation with the U. S. Attorney is worth while. Thus, I conclude that a debarment of two years is appropriate as a protection of the public interest while conforming to the two-year suspended sentence imposed by the Court.

Conclusion

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Respondent Carlass V. Roker and her affiliate, Carlass V. Roker Real Estate, Co. from doing business with HUD, and throughout the Executive Branch of the Federal Government, for a period of two years from August 21, 1989.

SO ORDERED.